BEFORE THE STATE BOARD OF EQUALIZATION---

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE FEDERAL SAVINGS AND LOAN)
INSTITUTE OF CALIFORNIA)

Appearances:

For Appellant: Leo L. Rosen, Certified Public Accountant

For, Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This is an appeal pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in disallowing the claim of the Federal Savings and Loan Institute for refund of tax paid under said Act in the amount of $156.85 for the period from March 11, 1938, to March 31, 1942.

Appellant is a California corporation organized primarily for the purpose of advertising and promoting the business of The Federal Savings and Loan Associations in California.

Respondent, in his brief, quotes from Appellant's articles of' incorporation relative to the purposes of the corporation as follows:

"(b) To foster, encourage and assist the development of Federal Savings and Loan Associations in the State of California; to disseminate information to the public relative to such associations; to encourage the investment of funds therein and financing of homes thereby.

"(c) To hold and acquire by purchase, gift or otherwise such real or personal property as may be necessary, expedient or convenient in connection with the transaction of the business of this corporation, provided, however, that this corporation shall not own or hold more property real or personal than its purposes, as hereinbefore set forth in subdivision (b) of this article, may require.

"(d) To have and enjoy all powers stipulated in Section 597 of the Civil Code of the State of California."

The purposes of the corporation are also indicated in an

affidavit signed by H. F. Duncan, one of the incorporators, claiming exemption from the franchise tax, a portion of which reads as follows:

> "...that said corporation is formed primarily for the purpose of conducting and carrying on an advertising and educational program for its members and to foster, encourage and assist the development of Federal Savings and Loan Associations in the State of California to disseminate information to the public relative to such associations, to encourage the investment of funds therein and financing of homes thereby. . . ."

Membership in the corporation is limited to Federal Savings and Loan Associations, to which are issued certificates of membership there being no capital stock. Each member pays annual dues of $25.00, and whatever assessments are levied from time to time by the board of directors. No other revenue is received, and the excess of tha corporation's receipts over its disbursements for advertising is used for administration expense.

Appellant contends that it is a corporation organized for educational purposes without financial or pecuniary gain or profit to its members, and therefore exempt from taxation under the first paragraph of Section 4(6) of the Bank and Corporation Franchise Tax Act, which reads:

> "Corporations organized for religious, charitable, social, cemetery, scientific, educational, recreational, literary, fraternal or civic purposes, if their organization or activities are not designed for, and do not result in financial or pecuniary gain or profit to the stockholders or members thereof, shall not be taxed under this act."

Assuming without deciding that the activities of the corporation do not result in financial or pecuniary gain or profit to its members, Appellant's contention cannot prevail unless it is organized for one of the purposes enumerated in Section 4(6) and as its claim is based solely upon the ground that its purposes are educational, it is unnecessary for us to consider in this appeal whether it was organized for any- of the other enumerated purposes.

Appellant's purposes, as set forth in its articles of incorporation and in the affidavit of one of its incorporators, quoted above, are described by Appellant as "educational advertising." Appellant does not deny that its activities consist of "advertising" the functions of Federal Savings and Loan Associations, but claims that this advertising is "educational," and that it is, therefore, organized for "educational purposes" within the meaning of the statute. Its method of advertising includes the use of the radio, and the object of the advertising is, quoting from Appellant's brief:

> "to disseminate information to the public so as to 'impart knowledge' and 'train' and 'teach' and

'instruct' the public for the purpose of giving them a better understanding of the functions of Federal Savings and Loan Associations."

Appellant then states, "To claim this is not educational is absurd."

It cannot be denied that the activities of Appellant result in increased knowledge of the particular subject about which information is disseminated. But to say that such activities show an "educational purpose" within the meaning of the statute would, in our opinion, give a too broad interpretation of the term "educational". Respondent's views in this connection are set forth in his brief as follows:

"Neither the State Act nor the Federal Revenue Act contains a definition of what constitutes a corporation organized for educational purposes. However, the regulations issued under the Internal Revenue Code define an educational organization to 'an organization . . . . designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an education organization within the meaning of the Code.

"'However, the publication of books or the giving of lectures advocating a cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting, to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial, and educational nature. (Reg. 103, Sec. 1910 (6)--1.)'

"As defined in Webster's New International Dictionary, the term 'education' means '. . . the impartation or acquisition of knowledge, skill or discipline of character; also, the act or process of training by a prescribed or customary course; . . .' See also 19 Corpus Juris. 1014, where education is defined as 'the process of developing and training the powers and capabilities of human beings; the bringing up, physically or mentally of a child, or the preparation by due course of training for a *professional or business life, or other calling. . .' Thus under these definitions of 'education' and organization for 'educational purposes' it seems clear that Appellant does not come within the meaning of these terms. Its activities are not for the purpose of

> developing the capabilities of individuals or of the public. Neither does it conduct a prescribed course of training intended to prepare people for a business or professional life or other calling. Appellant's activities are solely to advertise the facilities of and promote the business of the several Federal Savings and Loan Associations in the State of California. These cannot be considered educational purposes any more than other advertising of business or commercial enterprises. While it is true that Appellant was to carry on the advertising program without any profit to itself, this fact does not make its activities educational, for to be within that definition it must conduct educational, not advertising activities."

We believe that Respondent's views are supported by a common-sense viewpoint of what constitutes "educational purposes" within the meaning of the statute. We think the distinction between the use of the term in the broader sense contended for by Appellant and the narrower sense contended for by Respondent is well stated by the Connecticut Supreme Court of Errors in a case involving the taxable or exempt status of property of a Masonic organization under a state statute exempting from taxation the property of a corporation organized exclusively for scientific, educational, literary, historical, or charitable purposes. The statement follows

> While. .. it could hardly be denied that Masonry in theory and practice is educational in the broad sense of fostering the culture, developing the powers and forming the character of its members, the plaintiff does not claim that it is educational in the more restricted sense of offering systematic instruction and training for the young in preparation for the work of life. The history of the statute as applied to educational institutions makes it clear that it is the property of such organizations- as serve the purposes of education in this more restricted sense which the Legislature intended. to exempt." Masonic Building Assn. v. Town of Stamford, 119 Conn. 53; 174 Atl. 301.

In Underwriters' Laboratories, Inc. v. Commissioner of Internal Revenue, 46 B.T.A. 464, the Board of Tax Appeals held against petitioner's contention that it was exempt from federal income and excess profits taxes and surtax on undistributed profits either as a nonprofit corporation organized and operated exclusively for charitable, educational, or scientific purposes or as a business league, no part of the net earnings of which inures to the benefit of any private stockholder or individual. (Sec. 101(6) and (7), Revenue Acts of 1936 and 1938.) Petitioner was engaged in the examination, testing, classification, and inspection of devices, systems, and materials with reference to their relation to life fire, crime, and casualty hazards. It entered into contracts with manufacturers for testing, inspection, and label services. It issued publications, provided radio programs, and motion picture films, which the court conceded were "educational to a certain

extent, "but pointed out that they also "explain and emphasize the significance of petitioner's labels and call attention, directly or indirectly, to the products inspected and approved by it and to the manufacturers of such products" much as Appellant's radio programs and other activities call attention to the public to the benefits of taking advantage of the facilities of Federal Savings and Loan Associations, and "encourage the investment of funds therein and financing of homes thereby" (quoting from Appellant's articles of incorporation). This, we believe, is more than "educational" in its plain, ordinary meaning (which is the meaning intended by Congress; see Weyl v. Commissioner, 48 Fed. 2d 8 . It is the advocating of a course of action. As stated in Leubuscher v. Commissioner, 54 Fed. 2d 998, "To advocate means 'to plead in favor of to defend by argument before a tribunal or the public, to support,'vindicate or recommend publicly.' Webster's International Dictonary. This does not express an educational-purpose, although it may be educational in some degree to those who listen to or read the theories urged." Appellant at least "recommends publicly" the benefits of investing in Federal Savings and Loan Associations.

The foregoing considerations, particularly when viewed in the light of the well-established rule that a statute providing an exemption from taxation is construed strictly against the taxpayer (see Durham Merchant's Association v. United States, 34 Fed. Supp. 71, applying this rule to taxpayer's claim to exemption as a "business league") concinces us that Appellant does not qualify under Section 4(6) as an exempt corporation,

Appellant points out that it was held by the Commissioner of Internal Revenue exempt from federal income tax under the provisions of Section 101(7) of the Internal Revenue Code as a business league, and that it could, had it so elected, have been held exempt under Section 101(6) as a corporation organized for educational purposes. We are not impressed with this reasoning. We do not share Appellant's confidence that it would have been held exempt on this ground, nor would we be bound to abide by such a classificiation under the Inernal Revenue Code in determining what we believed to be Appellant's proper classification under the California statute.

It being our view that Appellant is not a corporation organized for educational purposes within the meaning of Section 4(6) of the Bank and Corporation Franchise Tax Act, it is unnecessary for us to pass upon the further question whether its organization or activities are not designed for, and do not result in financial or pecuniary gain or profit to its members; for, to be exempt under this section, a corporation must meet both requirements,

We are of the opinion, accordingly, that the action of Respondent in disallowing Appellant's claim for refund in the amount of $156.85 for the period from March 11, 1938, to March 31, 1942, should be sustained.

O R D E R

Pursuant to the-views expressed in the opinion of the Board

on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the action of Honorable Chas. J. McColgan, Franchise Tax Commissioner in disallowing the claim for refund of Federal Savings and Loan Institute of California in the amount of $156.85 for the period from March 11, 1938, to March 31, 1942, pursuant to Chapter 13, Statutes of 1929, as amended, be, and the same is hereby affirmed.

Done at Sacramento, this 23rd day of September, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary